

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA <u>ex rel.</u>)	
DARRYL L. KACZMARCZYK, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	CIVIL ACTION NO. H-99-1031
)	
SCCI HOSPITAL VENTURES, INC.)	
d/b/a SCCI HOSPITAL HOUSTON)	
CENTRAL and SCCI HEALTH)	
SERVICES CORPORATION,)	
)	
Defendants.)	
)	

JOINT STIPULATION OF DISMISSAL

COMES NOW the United States of America ("United States"), relators Darryl L. Kaczmarczyk, Michelle M. Pate, Teresa J. Taylor, Michael D. Brigle, and Patricia G. Rocha (also known as Patricia Lizotte) (collectively, "Relators"), and defendants SCCI Health Services Corporation, SCCI Hospital Ventures, Inc., d/b/a SCCI Hospital Houston Central ("SCCI Houston") (collectively, "SCCI"), Dr. Victor A. Pallares ("Pallares") and Dr. Ramachandra Malya ("Malya") (collectively, "Defendants") by and through their respective undersigned attorneys, and hereby stipulate as follows:

1. The United States and Relators have executed a written agreement ("Settlement Agreement") with Defendants in settlement of the United States' and the Relators' claims and causes of action against SCCI and Pallares and Malya as set forth in the United States' Complaint and First Amended Complaint and the Relators' Complaint, First Amended Complaint, Second Amended Complaint and Third Amended Complaint (attached as Exhibit 1).

2. Relators agree that the amount and terms of the Settlement Agreement reached by the above parties are fair, adequate and reasonable pursuant to 31 U.S.C. § 3730(c)(2)(B).

3. The Relators and Defendants have reached agreement regarding any claims that the Relators and/or their attorneys may have for fees and costs pursuant to 31 U.S.C. § 3730(d).

4. The United States and Relators have reached agreement in full settlement of any claims the Relators may have under 31 U.S.C. § 3730(d)(1) for a share of the proceeds of the government's settlement with SCCI.

5. Consistent with the terms of the settlement agreement and with the joint agreement of the parties, Relators move for leave to file the attached Third Amended Complaint (Exhibit 1) and request that the Court direct the Clerk to file the attached Third Amended Complaint prior to dismissal of this action pursuant to Paragraphs 6 and 7 below.

6. Accordingly, consistent with the terms of the Settlement Agreement, the United States and Relators request that, pursuant to Fed. R. Civ. P. 41(a) and 31 U.S.C. § 3730(b)(1), the claims set forth in the United States' Complaint and First Amended Complaint, including all counts therein, shall be dismissed with prejudice as to all parties.

7. Consistent with the terms of the Settlement Agreement, the United States and Relators further request that, pursuant to Fed. R. Civ. P. 41(a) and 31 U.S.C. § 3730(b)(1), the claims set forth in the Relators' Complaint, First Amended Complaint, Second Amended Complaint and Third Amended Complaint, attached as an exhibit hereto, be dismissed as follows:

- (a) The Relators' Complaint, First Amended Complaint, Second Amended Complaint, and Third Amended Complaint, including all counts therein, shall be dismissed with prejudice as to all Relators.
- (b) The allegations in Count I of the Relators' First Amended Complaint, Second Amended Complaint and Third Amended Complaint that SCCI knowingly submitted false claims and/or statements to Medicare by (1) falsely increasing its cost reimbursement and inflating the rate of reimbursement established pursuant to the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA") during SCCI Houston's base year cost report (the cost report period ending October 31, 1997) by allocating home office costs based on patient days as opposed to total costs; (2) including non-allowable costs for depreciation and interest associated with the purchase of SCCI Houston on SCCI Houston's cost reports for the periods ending October 31, 1997 through October 31, 2002; (3) improperly allocating amounts for amortization of prior year corporate pre-opening start-up costs on SCCI Houston's cost reports for the periods ending October 31, 1997 through October 31, 2002; and (4) including non-allowable salary expenses for individuals involved in marketing and development on SCCI Houston's cost reports for the periods ending October 31, 1997 through October 31, 2000 shall be dismissed with prejudice as to the United States.

- (c) The allegations in Count II of the Relators' First Amended Complaint, Second Amended Complaint and Third Amended Complaint, as to which the United States partially intervened, *see* United States' Amended Notice of Election to Intervene in Part and to Decline in Part and Request for Clarification (Docket No. 54) and United States' Motion for Leave to Amend Complaint or, in the Alternative, Motion to Partially Intervene for Good Cause (Docket No. 144), that during the period from November 1, 1996 through December 31, 2000, SCCI knowingly presented or caused to be presented false or fraudulent claims for payment or approval to the United States for reimbursement for services rendered to Medicare patients unlawfully referred to SCCI Houston by Pallares, Malya and Joseph Guerrini, M.D., to whom SCCI provided or caused to be provided illegal remuneration and/or with whom SCCI entered or caused to be entered into prohibited financial relationships with SCCI Houston, in violation of 42 U.S.C. § 1395nn and the regulations promulgated thereunder, shall be dismissed with prejudice as to the United States.
- (d) The remaining allegations in Relators' Complaint and in Counts I and II of the Relators' First Amended Complaint, Relators' Second Amended Complaint and Relators' Third Amended Complaint shall be dismissed without prejudice to the United States.¹

¹ Count III of the Relators' First, Second and Third Amended Complaints, alleging retaliation and wrongful discharge, are personal to the Relators and, therefore, the United States takes no position as to the dismissal of these Counts.

A Proposed Order is attached hereto.

Respectfully submitted,

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Assistant Attorney General

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Date: November 17, 2006

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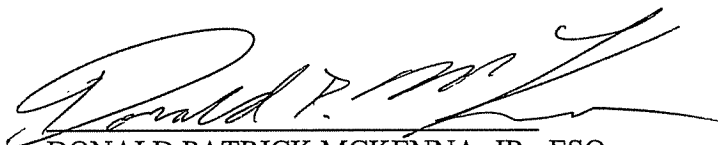
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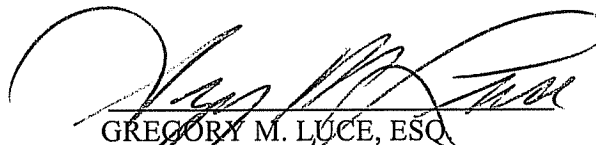
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Certificate of Service

December 15

I hereby certify that on November __, 2006, the Joint Stipulation of Dismissal and Proposed Order were mailed, first-class mail, postage prepaid to:

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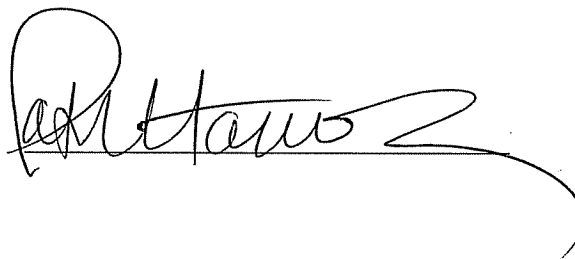
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A handwritten signature in black ink, appearing to read "Robert H. Hays", with a long, sweeping horizontal line extending to the right.